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86-2034

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

MICHAEL McGOVREN, PETITIONER

VERSUS

THE PEOPLE OF THE STATE OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF CALIFORNIA

THE PETITIONER
IN PROPRIA PERSONA

MICHAEL McGOVREN
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[10 JUNE 1987]

MLPTS100.DOC0028 PETITION COVER

QUESTIONS PRESENTED

In a misdemeanor prosecution:

1. Absent a waiver, should a motion for dismissal be granted on speedy trial grounds when arrest occured on 11 October 1986 and trial set for 15 April 1987 ?

2. Where State statute implements the right to speedy trial by specifying time intervals certain of 30 or 45 days which are triggered by such things as the filing of accusatory pleading, arraignment, filing of remittitur, declaration of mistrial, et cetera, but where there is no mention of arrest as a trigger of the speedy trial clock: where defendant was arrested:

a. shall arrest be an event which triggers the speedy trial clock, and

b. shall 45 or 60 days be considered a fair interval for speedy trial ?

3. Is trial beyond forty five or sixty days of arrest, in absence of waiver of the right to speedy trial a violation of the right ?

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THE PEOPLE OF THE STATE OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF CALIFORNIA

Michael McGovren respectfully petitions and prays that a writ of certiorari issue to review the judgement and summary denial by the Appellate Court entered 3 April 1987, and the subsequent California Supreme Court summary denial of certiorari entered 13 April 1987.

O P I N I O N S B E L O W

TRIAL (MUNICIPAL) COURT, Case C8689657: Santa Clara County judicial district. On hearing record 27 March 1987: denied. No explaination given. Petitioner proceeded directly to the Appellate Court due to extreme time pressure.

APPELLATE COURT, Case number: H002958 Summarilly denied 3 April 1987

CALIFORNIA SUPREME COURT: Certiorari summarilly denied 13 April 1987

J U R I S D I C T I O N

The jurisdiction of this court is invoked under 28 USC 1257 (3) and 28 USC 1651(a).

S T A T U T E S I N V O L V E D

The Petitioner knows of no California statutory implementation of the U. S. Supreme Court opinions applicable to this case. California Penal Code section 1382 does not recognize arrest as an event triggering the speedy trial clock and therefor does not comply with U.S. Supreme Court opinions.

STATEMENT OF THE CASE

Petitioner was arrested on 11 October 1986 and accused of reckless driving. Upon securing the petitioner, a police officer accosted petitioner's passenger who was sitting silently and motionless in the front passenger seat of petitioner's automobile. The police officer immediately demanded that the passenger identify himself. Passenger declined and was immediately arrested and accused of obstructing and delaying. Petitioner's automobile was siezed. Petitioner and passenger were transported to jail, booked, cited and released the next day upon a promise to appear signature.

On 27 March 1987, Petitioner held a hearing in the trial (muni) court for the purpose of demanding dismissal for lack of speedy trial. Petitioner asserted the rationale of the California Supreme Court

as annunciated in SERNA v SUPERIOR COURT 40 Cal.3d 239. In SERNA, the California Supreme Court cited several U.S. Supreme Court opinions and made it abundantly clear that ARREST is an event that triggers the speedy trial clock:

> "As we shall explain, opinions of the United States Supreme Court state, without qualifications as to the level of offense charged, that the right attaches with the filing of the accusatory pleading or ARREST, whichever is first." [emph addd] 2nd paragraph of opinion of the court, page 245

California Supreme Court Justice Lucas in a seperate opinion drove the point home:

> "ARREST OF A SUSPECT, providing he is subsequently charged, WILL ALWAYS TRIGGER THE FEDERAL SPEEDY TRIAL PROVISION." [emph addd] page 271

Petitioner perceives this language to be clear, unequivocal, certain and admitting no exceptions.

In the hearing on 27 March 1987, the prosecutor argued only that Petitioner had not shown prejudice.

The court ruled against Petitioner. Petitioner was flabbergasted. The prosecutor did not even attempted to rebut Petitioner's Sixth Amendment Speedy Trial arguments. The prosecutor instead addressed a Fifth Amendment due process issue by speaking to prejudice. Petitioner regards this to be off point since he was arguing speedy trial and not due process. Petitioner perceives speedy trial to be a wholly different issue from due process and the issues are even seperated by being in two different articles of the Bill Of Rights.

Petitioner remains puzzled as to how the prosecutor defeated Petitioner's speedy trial argument by proffering a due process matter.

R E A S O N S W R I T

S H O U L D B E G R A N T E D

Petitioner perceives that the principles pertinent in the instant cause are well covered by extant opinions of this Court, therefor, only a very small allocation of this Court's resources should be needed to set this matter right.

The California State statutes are silent regarding ARREST as a trigger of the speedy trial clock and thus fail to statutorially implement and recognize this Court's position that ARREST triggers the speedy trial clock.

This Petitioner believes that since the foundation of this speedy trial matter has been thoroughly settled by previous opinions of this Court, a very brief disposition of this matter is possible.

Petitioner urges this Court to take

such action as will give life and effect to opinions of this Court that ARREST triggers the speedy trial clock and thus give life and effect to the Constitution.

REASONS WHY PETITONER BELIEVES ARREST TRIGGERS SPEEDY TRIAL CLOCK

In chronological order:

In 1967, "The petitioner is not relieved of the limitations placed upon his liberty by this prosecution merely because its suspension permits him to go "withersoever he will." The pendency of the indictment may subject him to public scorn and deprive him of employment, and almost certainly will force curtailment of his speech, associations and participation in unpopular causes."
KLOPFER v NORTH CAROLINA 386 US 213, 222

In 1968, "...this constitutional guarantee has universally been thought essential to protect at least three basic demands of criminal justice in the Anglo-American legal system: "... [2] to minimize anxiety and concern accompanying public accusation ..." United States v Ewell 383 US 116, 120 in SMITH v HOOEY 393 US 374, 377-378

In 1971, "Cf. also S. 895, 92d Cong., 1st Sess., a bill intended "[t]o give effect to the sixth amendment right to speedy trial for persons charged with offenses against the United States." The protections of the bill are engaged

"within sixty days from the date the defendant is ARRESTED ..." [emph addd]
footnote on page 319

"But the major evils protected against by the speedy trial guarantee exist quite apart from actual prejudice to an accused's defense." ... "ARREST is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends." ... "So viewed, it is readily understandable that it is either a formal indictment or information or else the actual restraints imposed by ARREST and holding to answer a criminal charge that engage the particular protections of the speedy trial provision of the Sixth Amendment."
[emph addd] page 320

"Invocation of the speedy trial provision thus need not await indictment, information, or other formal charge." text at top of page 321

" "the date the charge is filed, except that if the defendant has been continuously held in custody or on bail or recognizance until that date to answer for the same crime or a crime based on the same criminal episode, then the time for trial should commence running from the date he was held to answer." footnote 12 on page 321

"But this possibility of prejudice at trial is not itself sufficient reason to wrench the Sixth Amendment from its proper context." page 321-322
UNITED STATES v MARION 404 US 307 (1971)

In 1971, "Thus, unlike the right to counsel or the right to be free from compelled self-incrimination, deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself." page 521
BARKER v WINGO, WARDEN 407 US 514, 521

IN 1972, "BARKER v WINGO expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the constitutional right to a speedy trial:" ... "Moreover, prejudice to a defendant caused by delay in bringing him to trial is not confined to the possible prejudice to his defense in those proceedings."
MOORE v ARIZONA 414 US 25, 26, 26-27

In 1981, "The Sixth Amendment right to a speedy trial is thus not primarily intended to prevent prejudice to the defense caused by passage of time; that interest is protected primarily by the Due Drocess Clause and by statutes of limitations. The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges."
UNITED STATES v MacDONALD 456 US 1, 8

The following excerpts are from California Supreme Court opinion
SERNA v SUPERIOR COURT 40 Cal. 3d 239; 219 Cal.Rptr. 420,707 P.2d 793 [Oct. 1985]

"As we shall explain, opinions of the United States Supreme Court state, without qualification as to the level of offense charged, that the right attaches with the filing of the accusastory pleading or ARREST, whichever is first." page 245 [emphasis added]

"It protects a criminal defendant against oppresive pretrial incarceration, anxiety, concern, and disruption of his everyday life." page 251
Barker v Wingo, 407 US 514,532 [33 L.Ed.2d 101,118]

"but only delay following formal accusation or delay subsequent to ARREST are considered in evaluating a claim under the Sixth Amendment speedy trial clause." page 251
United States v McDonald (1982) 456 US 1, 7 [71 L.Ed.2d 696,703,102 S.Ct. 1497]

"Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends." page 251
Klopfer v North Carolina (1967) 386 US 213, 223 [18 L.Ed.2d 1, 8, 87 S.Ct.988]

"...it is readily understandable that

it is either a formal indictment or information or else the actual restraints imposed by ARREST and holding to answer a criminal charge that engage the particular protections of the speedy trial provision of the Sixth Amendment." "
page 252 [italics ommitted, caps added]
United States v Marion 404 US 307, 320 [30 L.Ed.2d 468, 478-479]

" "...a defendant seeking dismissal on grounds that his right to speedy trial has been violated need not demonstrate prejudice as a prerequisite to judicial consideration of his claim." " page 252 [emphasis added]

"...in Marion the court uses language generally applicable to any criminal proceeding, refering to the time at which "the putative defendant in some way becomes an 'accused' " (404 US at p. 313 [30 L.Ed.2d at p. 474]; ...and to whether the defendant had been "ARRESTED, charged, or otherwise subjected to formal restraint prior to indictment" (id., at p. 325 [30 L.Ed.2d at p. 481]), as events triggering the right to speedy trial" page 256

" "The petitioner is not relieved of the limitations placed upon his liberty by this prosecution merely because its suspension permits him to go 'withersoever he will.' The pendancy of the indictment may subject him to public scorn and deprive him of employment, and almost certainly will force curtailment of his speech, associations and participation in unpopular causes." "

Klopfer v North Carolina 386 US at pp. 221-222 [18 L.Ed. 2d at p. 7],fn.omitted

" "The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges." "
page 260 United States v McDonald 456 US 1,8 [71 L.Ed. 2d 696,704]

"In sum, ... we hold... . We are persuaded by repeated reference in decisions of the United States Supreme Court ..., that the Sixth Amendment right to speedy trial attaches in misdemeanor prosecutions, as it does in felonies, with the filing of the accusatory pleading, ..., or ARREST, whichever is first." page 262[emph addd]

"Therefore, ARREST of a suspect, ..., will always trigger the federal speedy trial provision." page 271 [emph addd] third paragraph of seperate opinion by Justice Lucas, presently chief justice of the California Supreme Court

Above is from California Supreme Court in SERNA V SUPERIOR COURT 40 Cal.3d 239(1985)

C O N C L U S I O N

Petitioner has shown that the California Supreme Court is thoroughly cognizant of this Court's position regarding the subject matter of this Petition. This causes Petitioner to be very dismayed at the California courts' apparent disinterest in abiding by the rulings of this Nation's highest Court. That ARREST is deemed by this Court to trigger the right to speedy trial is clear, unequivocal, certain, and admits of no exceptions.

The only thing that remains less than absolutely clear and definite is the specific time certain for trial, beyond which is deemed a violation of the Inherent Inalienable Creator Endowed Right to Speedy Trial.

Petitioner would urge this Court to adopt the standard of sixty days which was

recommended in MARION:

> "Cf. also S. 895, 92d Cong., 1st Sess., a bill intended "[t]o give effect to the sixth amendment right to speedy trial for persons charged with offenses against the United States." The protections of the bill are engaged "within SIXTY DAYS from the date the defendant is ARRESTED ..." [emph addd] footnote on page 319
> UNITED STATES v MARION 404 US 307 (1971)

Petitioner would point out that the California Penal Code section 1382 currently provides for a speedy trial time of sixty days from indictment or filing of the information in felony cases, and forty five days from arraignment in misdemeanor cases. Petitioner wishes to convince this Court that FORTY FIVE or SIXTY DAYS after ARREST is a reasonable time in which to require the government to commence trial of an accused.

Petitioner hopes this Court will agree that compulsion to trial on 15 April 1987 for a misdemeanor offense allegedly

committed on 10 October 1986, absent a waiver of the Right to Speedy Trial, is a violation of this Petitioner's Inherent Inalienable Creator Endowed Rights.

In conclusion, Petitioner believes that justice would be well served if this Court would anchor this aspect of our Rights by making specific and firm the time after arrest, beyond which the Right to Speedy Trial is violated in absence of waiver of the right.

And so, the Petitioner does then, urge this Court to hold that: TRIAL BEYOND FORTY FIVE OR SIXTY DAYS OF ARREST, IN ABSENCE OF WAIVER OF THE RIGHT TO SPEEDY TRIAL IS A VIOLATION OF THE RIGHT.

Thank you for your attention to this petition. PLEASE GRANT CERTIORARI.

Michael McGovren, In Propria Persona
% W.D., P.O.Box 451
San Leandro, CA 94577

this sheet is a restatement of an order of the Court of Appeal dated 3 April 1987.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
in and for the
SIXTH APPELLATE DISTRICT

MICHAEL McGOVREN, Petitioner,	)	No. H002958
vs.	)	
SANTA CLARA COUNTY MUNICIPAL COURT, Respondent,	)	Municipal Court No. C8689657

PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest.

BY THE COURT

The petition for writ of mandate is denied.

(Agliano, P.J., Brauer, J., and Capaccioli, J. participated in this decision.)

Dated APR - 3 1987

AGLIANO, P.J. P.J.

This sheet is a restatement of an order
of the California Supreme Court
filed 13 APRIL 1987

No. H002958 - S000517

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN BANK

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MICHAEL MCGOVREN , Petitioner

v.

MUNICIPAL COURT OF THE SAN JOSE JUDICIAL DISTRICT, Respondent;
PEOPLE, Real Party in Interest

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Aplication for stay and petition for review DENIED.

signed Lucas
Chief Justice